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Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ROENA DYVAUGHN CARTER,** **a.k.a. ROENA DYVAUGHN WILSON** **32 Castle del Mar Avenue** **Atwater, CA 95301** **Registered Nurse License No. 254894** **Public Health Nurse Certificate No. 26454** Respondent.	Case No. 2010-15 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

Registered Nurse License No. 254894

2. On or about August 31, 1975, the Board issued Registered Nurse License Number 254894, to Roena Dyvaughn Carter, also known as Roena Dyvaughn Wilson ("Respondent"). Respondent's registered nurse license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2011, unless renewed.

///

Public Health Nurse Certificate No. 26454

3. On or about May 22, 1978, the Board issued Public Health Nurse Certificate Number 26454 to Respondent. Respondent's public health nurse certificate was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2011, unless renewed.

STATUTORY AND REGULATORY PROVISIONS

4. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

6. Code section 2761 states, in pertinent part:

> The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:
>
> (a) Unprofessional conduct, which includes, but is not limited to, the following:
>
> (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.
>
> . . . .
>
> (4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action . . .

7. California Code of Regulations, title 16, section ("Regulation") 1442 states:

> As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

COST RECOVERY

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

9. At all times herein mentioned, Respondent was employed as a registered nurse for Nightengale Nursing Services, a nurse registry.

10. On or about February 2, 2005, J. L. M., a 65 year old female (hereinafter "patient"), was admitted to Kindred Hospital of Modesto, also known as Modesto Rehabilitation Hospital (hereinafter "Kindred"), a long-term care facility located in Modesto, California, for chronic respiratory care and nursing care. The patient had been diagnosed with advanced chronic obstructive pulmonary disease, chronic respiratory failure, tracheostomy status, hypertension, Cushing disease secondary to chronic prednisone use, diabetes mellitus (steroid induced, requiring insulin), and history of depression and gastroesophageal reflux disease.

11. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that on or about February 22, 2005, while assigned to work and on duty as the night shift charge nurse at Kindred, Respondent committed acts constituting gross negligence in her care of the patient as defined in Regulation 1442, as follows:

a. Respondent committed acts constituting verbal abuse of an elder, as follows: Respondent was notified by A. B., a certified nurse's assistant, that the patient was requesting medication for pain and/or anxiety.[1] Respondent told staff, including respiratory care practitioner T. G, in the presence of the patient: "Don't bother with her; she just turns on the light, and one

[1] The patient had physicians' orders in effect for 1 tablet of hydrocodone 7.5 mg every 4 hours PRN (as needed) for moderate pain, 2 tablets of hydrocodone 7.5 mg every 4 hours PRN for severe pain, and 1 tablet of Ativan (lorazepam) 0.5 mg by mouth every 6 hours PRN for anxiety/restlessness.

thing she's not going to do while I'm here is abuse my staff." The patient later reported that she was fearful or afraid of physical harm after her interaction with Respondent.

b. Respondent failed to assess the patient's pain or anxiety.

c. Respondent failed to take any nursing measures to reduce the patient's pain or anxiety, including administering the requested medication(s) to the patient.

d. Respondent failed to assess the patient's airway despite the fact that the patient was "gurgling" and in need of suctioning.

e. Respondent failed to provide any assistance in managing the patient's airway, including suctioning the patient's secretions.

SECOND CAUSE FOR DISCIPLINE

Unprofessional Conduct

12. Complainant incorporates by reference as though fully set forth herein the allegations contained in paragraphs 9 and 10 above.

13. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), in that on or about February 22, 2005, while assigned to work and on duty as the night shift charge nurse at Kindred, Respondent committed acts constituting unprofessional conduct, as set forth in paragraph 11 above.

THIRD CAUSE FOR DISCIPLINE

(Disciplinary Action by the North Carolina Board of Nursing)

14. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a)(4), on the grounds of unprofessional conduct, in that on or about March 27, 1998, pursuant to the Settlement Agreement in the disciplinary proceeding titled *In the Matter of: Roena Dyvaughn Carter, RN*, the North Carolina Board of Nursing (hereinafter "North Carolina Board") suspended Respondent's license to practice registered nursing in that state for a period of one (1) year. The North Carolina Board also ordered that prior to consideration for reinstatement of her license, Respondent must have an evaluation by a Board approved psychiatrist for the evaluation of her mental health status and to determine if she is fit and competent to practice nursing. As set forth in the North Carolina Board's Statement of Charges, Respondent was

alleged to have been involved in incidents while employed at Moore Regional Hospital in Pinehurst, North Carolina, indicating that she was not safe and competent to practice nursing in that she was negligent in the care she provided to clients. True and correct copies of the Settlement Agreement and Letter of Charges are attached hereto as exhibit A and are incorporated by reference as though fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 254894, issued to Roena Dyvaughn Carter, also known as Roena Dyvaughn Wilson;

2. Revoking or suspending Public Health Nurse Certificate Number 26454, issued to Roena Dyvaughn Carter, also known as Roena Dyvaughn Wilson;

3. Ordering Roena Dyvaughn Carter, also known as Roena Dyvaughn Wilson, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: 7/8/09

RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SA2009307484
accusation.rtf

EXHIBIT A

NORTH CAROLINA BOARD OF NURSING

James K. Lynch, R.N., M.N., C.N.A.A., *Chairman*
Patricia A. Beverage, L.P.N., *Vice-Chairman*
Mary P. Johnson, R.N., M.S.N., *Executive Director*

P.O. Box 2129
Raleigh, NC 27602-2129
FAX (919) 781-9461
(919) 782-3211
Nurse Aide Registry (919) 782-7499

February 16, 1998

Ms. Roena Dyvaughn Carter
P O Box 691
Pinehurst, North Carolina 28370

RN Cert. #54438
Expiration: 12-31-99

Dear Ms. Carter:

It has come to the attention of the North Carolina Board of Nursing that while you were employed at the Moore Regional Hospital in Pinehurst, North Carolina, you were involved in incidents that indicate you may not be safe and competent to practice nursing. Specifically, you were negligent in the care you provided to clients.

While you were employed in this agency, you worked the 11P to 7A shift on the Medical Unit. On or about June 2, 1997, you were assigned to work this shift. One of the patients to whom you were assigned (Patient MRW) was to receive Zaroxolyn 20mg PO tonight and Lasix 200mg IV at 6 a.m. These medications were listed under the "STAT" medication column of the patient's MAR. There is no documentation to substantiate that these medications were given on this night. Additionally, on this night, you were assigned to Patient M.A. This patient was an 87 year old bedridden, comatose patient with a seizure disorder. She also had a Foley catheter and a PEG Tube and was a diabetic on a sliding scale. This patient was to receive Glucerna 1 can Q 8 hours followed by 60cc of normal saline flush, and accu-checks every 6 hours with a sliding scale Insulin ordered. The patient was admitted to the Unit with these orders at 2240 on 6-2-97. The first entry on the Diabetic Record for an accu-check is dated 6-3-97 at 7:50 a.m. and is initialed by someone other than yourself. The Clinical Record further includes documentation for tube feedings listing 0 under Intake for the 11 to 7 shift which was your shift. There was an Admission Note that was allegedly performed by you and a Patient Care Note that was written for this patient at 1:50 a.m. on 6-3-97.

When you were questioned about these incidents by an Investigator for the North Carolina Board of Nursing, you had no recollection of Patient MRW and the STAT ordered medication. When you were questioned about the second patient, you stated "My documentation might not even be there-that's the

problem." When you were shown the Clinical Record regarding the fact that there were no vital signs taken between 11P and 7A, you explained that routine procedure was for vital signs to be taken every 4 hours when the patient was awake. You stated it was not unusual during the 11 to 7 shift for vital signs to not be taken when patients were sleeping. However, it is noted this patient was comatose. Further review of the Clinical Record with you indicated that there was no documentation concerning the PEG Tube feeding during your shift. You admitted that although the Admission Note was not signed, that the entry was your assessment data and documentation.

Additionally, you were asked to address a report that we received that indicated you had been counseled for having an least two (2) patients crawl back to their room from the bathroom. This matter was reported from your Nurse Managers and they indicated you told them these were patients you could not lift or assist them in ambulating by yourself and that you told them it would just be safer for them to crawl on their hands and knees to return to their beds from the bathroom. When you were questioned regarding this specific incident, you denied that it had ever occurred. However, you signed the Counseling Form related to this incident and indicated "accept as given."

Therefore, you were negligent in the care you provided to clients.

This indicates you may have violated the Nursing Practice Act , Section G. S. 90-171.37 (4) (5) (6) (7) and (8) as follows:

(4) engages in conduct that endangers the public health;

(5) is unfit or incompetent to practice nursing by reason of deliberate or negligent acts or omissions regardless of whether actual injury to the patient is established;

(6) engages in conduct that deceives, defrauds, or harms the public in the course of professional activities or services; or,

(7) has violated any provision of this Article; or,

(8) has willfully violated any rules enacted by the Board; and,

as further identified in Regulation 21 N.C.A.C. 36.0217(c) (10) and (12) as follows:

(10) abandoning or neglecting a client who is in need of nursing care, without making reasonable arrangements for the continuation of such care;

(12) failure to maintain an accurate record for each client which records all pertinent health care information as defined in Rule .0224 (f) (2) or .0225 (f) (2).

You are entitled to have an Administrative Hearing before a majority of the members of the Board of Nursing or its designated Hearing Officer. At that time, you would be given the opportunity to present sworn testimony, arguments and evidence regarding the allegations against you. Should you desire such a Hearing, one will be scheduled for you within a reasonable time in keeping with the provisions of Chapter 150B, Article 3A of the General Statutes. The following general statutes, rules and procedures apply according to G.S. 150B, unless another specific statute or Rule of the North Carolina Board of Nursing provides otherwise: Rules of Civil Procedure as contained in G.S. 1A-1 and Rules of Evidence pursuant to G.S. Chapter 8C; G.S. 90-86 through 90-113.8; 21 NCAC 36.0224-.0225; Article 3A, Chapter 150B; and Rule 6 of the General Rules of Practice for Superior and District Court.

Every document filed with the Board of Nursing shall be signed by the person, applicant, licensee, or his attorney who prepares the document and shall contain his name, title/position, address, and telephone number. If the individual involved is a licensed nurse, the nursing license certificate number shall appear on all correspondence with the Board of Nursing.

Your alternative in this matter is to voluntarily surrender your license to practice nursing for a period of not less than three (3) months effective with the date on which it is received in this office. During that time, you would be prohibited from practicing nursing, but you would be permitted to work in jobs which do not require a nursing license. At the conclusion of the time specified, you may petition the Board for the return of your license. Your petition would need to be accompanied by evidence that will show you are fit to re-enter the practice of nursing. At the time of reinstatement, you may initially be issued a Restricted license.

Enclosed is a Consent To Surrender Form. Should you select the option to return your license voluntarily, please sign and date the form before a notary public and return it to this office. Your wallet sized license must be attached to the Consent To Surrender Form. The date of suspension begins the day the executed form and wallet sized license are received in the Board office.

Chapter 150B, Article 3A of the General Statutes and Board of Nursing rules promulgated therefrom, does provide for a mechanism for attempted resolution of contested administrative matters in lieu of a formal Hearing. The Board of Nursing has established a Settlement Committee for the purpose of attempting to resolve matters. Although the Board of Nursing desires to settle cases whenever possible, such can only be achieved if all parties agree to the terms and

conditions of the settlement. The Settlement Committee is composed of two (2) or three (3) Board members.

A settlement conference, if requested by you, is held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings. The conference shall be held in the offices of the Board of Nursing. All parties shall attend or be represented at the settlement conference. You should be prepared to discuss the alleged violations and the incidents on which these are based. If an attorney attends the Settlement Committee Meeting without his/her client, he/she must bring a notarized statement from the licensee granting authority to enter into a final Agreement on the licensee's behalf.

On the date of the Settlement Committee Meeting, a form shall be signed by you which invalidates all previous offers made to the licensee by the staff on behalf of the Board of Nursing.

As this is an informal setting, testimony will not be taken from individual witnesses. However, you may present any written testimony or documentation that you may choose from persons who would be called upon as witnesses. For these documents to be considered, they **MUST** be notarized.

The Settlement Committee will consider information/evidence presented by the Board staff and the licensee (or his/her attorney) in reaching a proposed settlement.

The Settlement Committee is vested with the authority by the North Carolina Board of Nursing to reach a final decision regarding settlement, but is not empowered to dismiss a case. If a settlement is reached, the Board of Nursing will forward a written Settlement Agreement containing all conditions of the settlement to the licensee and other party(ies). On the date of the Settlement Conference, a form **MUST** be signed by all parties which indicates whether the settlement offer is accepted or rejected.

The licensee should bring their wallet sized license with them to the Settlement Conference. If a Settlement is reached, the action is effective the day of the meeting, and the license (if suspended of revoked) is surrendered at the time the Settlement Agreement is signed. If the sanction imposed is a **RESTRICTED** license, the regular wallet sized license will be surrendered at the time the Agreement is signed and a **RESTRICTED** license will be issued. Should the licensee fail to bring the license and an Agreement is reached, the effective date of the Agreement will be the date on which the actual wallet sized license is received in the office of the Board of Nursing.

If a settlement is reached, the decision of the Settlement Committee will be reported in the **BULLETIN**. All actions of the Board, including disciplinary matters, are considered public information and will be reported in the **BULLETIN**.

Should the Settlement Committee be unable to successfully resolve a case, the matter will be scheduled for an Administrative Hearing before a majority of the members of the Board.

The Settlement Committee has the authority to reject any offers of settlement for which they feel the ends of justice would be better served by a decision being rendered by the majority of the members of the North Carolina Board of Nursing.

An appearance before the Settlement Committee will only be held upon the written request of the licensee or his/her attorney. If a written request for a Settlement Conference is not made, an Administrative Hearing will be conducted if resolution to the matter has not been achieved.

In accordance with G.S. 90-171.27(d) and Board of Nursing policy derived therefrom, an administrative fee may be assessed for disciplinary matters. (See enclosed administrative fee schedule.)

A written response is required from you within ten (10) days of receipt of *this notice to notify us as to how you wish to proceed.*

Should you have any questions about any information in this letter, please feel free to call or write.

Sincerely,

Donna H. Mooney

Donna H. Mooney, RN, MBA
Associate Director
Discipline Department

DHM/lr

BEFORE THE BOARD OF NURSING
OF THE STATE OF NORTH CAROLINA

In the matter of:	)	
Roena Dyvaughn Carter, RN	)	SETTLEMENT AGREEMENT
Certificate #54438	)	

On March 27, 1998, pursuant to the authority vested by Article 9A, Chapter 90 of the General Statutes of North Carolina and Article 3A of Chapter 150B of the General Statutes of North Carolina, the North Carolina Board of Nursing held a Settlement Conference in a matter involving Roena Dyvaughn Carter, RN.

The Settlement Committee is vested with the authority from the North Carolina Board of Nursing to enter into a final decision regarding settlement with a licensee. The members of the North Carolina Board of Nursing seated as the Settlement Committee on March 27, 1998 were Frances Eason, RN; Presiding Officer of the Settlement Committee; Marjorie Strawn, Public Member; and Jane Newton, LPN.

(1) Roena Dyvaughn Carter is the holder of RN Certificate #54437 which expires on December 31, 1999.

(2) Roena Dyvaughn Carter was issued a Letter of Charges from the North Carolina Board of Nursing dated February 16, 1998 as the result of being negligent in the care you provided to clients.

(3) After careful consideration of all information received, the Settlement Committee determined the information would tend to show that the licensee has violated the Nursing Practice Act Section G.S. 90-171.37 (4) (5) (6) (7) and (8) and Regulation 21 N.C.A.C. 36.0217(c) (10) and (12).

(4) The licensee expressly waives an Administrative Hearing, the making of Findings of Fact and Conclusions of Law, and all further proceedings before the Board to which she may be entitled by law.

(5) This Stipulation shall be made part of the record and filed with the North Carolina Board of Nursing and does become public information. This Stipulation is made for the purposes of settlement of the contested administrative proceeding before the Board of Nursing only.

3/27/98

In the matter of:)

Roena Dyvaughn Carter, RN) **PAGE 2 OF 4**

Certificate #54438)

SETTLEMENT AGREEMENT
(CONTINUED)

(6) Based on this Stipulation, and without further notice of proceedings, the Board of Nursing enters into the following Settlement Agreement with Roena Dyvaughn Carter.

The RN license of Roena Dyvaughn Carter shall be suspended for a period of one (1) year.

Prior to consideration for reinstatement of her license, Ms. Carter must have an evaluation by a Board approved psychiatrist for the evaluation of her mental health status and to determine if she is fit and competent to practice nursing. Ms. Carter must follow any/all recommendations of the psychiatrist.

Additionally, she must have her current therapist provide a copy of her treatment plan, admission diagnosis and history to the Board regarding her current therapy. This must be provided within sixty (60) days of this Settlement Conference.

At the time of consideration for reinstatement of her license, Ms. Carter must appear before the Licensure Committee to present those documents and evidence that she is fit and competent to re-enter nursing.

Ms. Carter may not be listed as a Nurse Aide II and the North Carolina Board of Nursing will recommend to the Division of Facility Services that she not be listed as a Nurse Aide I.

(7) The licensee expressly waives all right to seek judicial review or to otherwise challenge the validity of said SETTLEMENT AGREEMENT.

(8) This Stipulation contains the entire Agreement between the Board and the licensee, there being no agreement of any kind, verbal or otherwise, which varies, alters or adds to this Stipulation.

RC 3/22/05

In the matter of:)

Roena Dyvaughn Carter, RN) **PAGE 3 OF 4**

Certificate #54438)

SETTLEMENT AGREEMENT
(CONTINUED)

(9) In accordance with G.S. 90-171.27 (d) and Board of Nursing policy derived therefrom, a fee of $250.00 will be assessed. The fee will be due no later than June 15, 1998. Failure to remit the assessed fees within the prescribed period of time may be grounds for revocation of the license.

(The North Carolina Board of Nursing does not wish to create a financial burden for our licensees. Therefore, if payment of the assessed fee would pose a hardship, special arrangements can be made for repayment of these fees. If special consideration is needed, the licensee must contact the Associate Director/Discipline within ten (10) days of receipt of this Agreement to make those arrangements; otherwise, payment will be expected by the due date indicated in this Agreement.)

3/27/98

In the matter of:)

Roena Dyvaughn Carter, RN) **PAGE 4 OF 4**

Certificate #54438)

SETTLEMENT AGREEMENT
(CONTINUED)

Having read the proposed Settlement offer made by the Settlement Committee,

I accept 3/27/98 _____
DATE INITIAL

I decline _____
DATE INITIAL

the offer made by this Committee.

This the 27th day of March, 1998,

Roena Dyvaughn Carter
LICENSEE

LICENSEE'S ATTORNEY

PRESIDING OFFICE OF THE SETTLEMENT COMMITTEE

EXECUTIVE DIRECTOR--NORTH CAROLINA BOARD OF NURSING

GENERAL COUNSEL FOR THE NORTH CAROLINA BOARD OF NURSING

SETTLEMENT COMMITTEE CONFERENCE

On MARCH 27, 1998, I, ROENA DYVAUGHN CARTER, RN, attended a Settlement Committee Conference at the North Carolina Board of Nursing.

I understand that up to and until the commencement of this Settlement Committee Conference, I have the option of accepting the sanctions proposed in the Letter of Charges dated FEBRUARY, 16,1998.

Once this Settlement Committee Conference has been convened, the sanctions outlined in the Letter of Charges dated FEBRUARY 16, 1998 are no longer available an option.

Once this Settlement Committee Conference has been convened, I understand the sanctions offered by the Committee may be greater, lesser, or may be the same sanction as proposed in the Letter of Charges dated FEBRUARY 16, 1998.

In accordance with G.S. 90-171.27 (d) and Board of Nursing policy derived therefrom, an Administrative fee may be assessed if a licensee is found to be in violation of the Nursing Practice Act. Should a Settlement Agreement be reached, an Administrative fee of $250.00 will be assessed.

Roena Carter — 3/27/98

LICENSEE — DATE

PRESIDING OFFICER OF THE SETTLEMENT COMMITTEE

EXECUTIVE DIRECTOR
NORTH CAROLINA BOARD OF NURSING